Supreme Court, U.S.
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No._____

In The
Supreme Court of the United States

EDWIN I. EJIKEME,

Petitioner,

v.

DON VIOLET, c/o STATE OF OHIO DEPARTMENT OF TRANSPORTATION; and STATE OF OHIO DEPARTMENT OF TRANSPORTATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Sixth Circuit affirmed the district court's granting summary judgment in favor of ODOT and Violet for a claim of discrimination based on race, religion, and national origin in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and 42 U.S.C. §§ 1981 and 1983. Appellant also claimed that he was retaliated against for reporting suspected fraud in violation of the First Amendment and that he was constructively discharged.

One question is presented:

1. Whether the reasonable person standard applies to employees not similar in race and culture when analyzing the merits of a constructive discharge, or hostile environment claim or should another standard be used in hostile work environment or constructive discharge claims.

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BASIS OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its opinion on January 26, 2009. This Court's jurisdiction is based upon 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

United States Constitution, Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunity of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws.

STATEMENT OF CASE AND PROCEEDINGS

Petitioner, as Plaintiff, Pro Se, filed his original complaint on October 25, 2005, in the United States District Court for the Southern District of Ohio, Eastern Division, seeking declaratory, preliminary and

permanent injunction relief and for damages against the Respondents. Plaintiff

alleged he was denied equal "terms" and "conditions" of employment because of his religion (a born again Christian) and National Origin, having been born in Nigeria. (Compl., App. 6a).

Petitioner filed an Amended Complaint Pro Se on December 21, 2005 adding that he was denied equal "terms" and "conditions" of employment because of his race (African-American) and alleged he was constructively discharged when he resigned his employment with the Ohio Department of Transportation (ODOT) rather than continue to endure a "pervasive hostile work environment." These claims were brought pursuant to Title VII of the 1964 Civil Rights Act as amended, and Title 42 U.S.C. §§ 1981 and 1983.

Respondents responded to the Complaint essentially denying his allegations, and at the close of discovery, Respondents filed a Motion for Summary Judgment, arguing that there are no genuine issues of material fact for the trier of fact and they are entitled to judgment as a matter of law. The court agreed with Respondents and on September 17, 2007, directed the Clerk, by Order to enter a judgment in favor of Respondents. (Opinion and Order, App. 9a). Petitioner retained counsel to address his issues on appeal.

Petitioner's Appellate counsel appealed the District Court's ruling to the Sixth Circuit Court of Appeals. On appeal, Petitioner raised three (3) issues for consideration: (1) should the District Court's grant of Summary Judgment be affirmed since there are genuine issues of material fact, (2) should the District Court's grant of Summary Judgment be affirmed since the Court invaded the province of the jury by weighing the evidence, and (3) did the Court give greater deference to Respondents and weigh the evidence in a light more favorable to the moving party.

On January 26, 2009, the Sixth Circuit Court of Appeals issued an Order affirming the District Court's grant of summary judgment.

The evidence shows that Petitioner is an African American male and a naturalized American citizen with a pronounced accent whose native home is Nigeria. He attended the University of Houston where in December 1989 he graduated with a degree in Civil Engineering. Petitioner was hired by ODOT in July 1990 as a Project Engineer Intern in ODOT's Engineer In Training Program. (Sworn Amend. Compl., Amend. App. 6b). In May 1992, he applied for the position of Design Engineer I. In August 1992, Petitioner learned the job had been awarded to a white male who Petitioner alleged had less seniority than he. (Pl.'s Ex. 2, Civil Action C-2-93-1094 filed in the United States District Court for the Southern District of Ohio Eastern Division). In early 1993, Petitioner alleged that Respondent ODOT and a white supervisor with ODOT denied him equal terms and conditions of employment

because of his race, Black, by wrongly denying him a promotion to the position of Design Engineer II, posted five different times. (Pl. Ex. 2). Petitioner filed a lawsuit for this claim and the case was settled in 1997 in favor of Petitioner for an undisclosed amount. (Pl.'s Depo., p. 29, App. 12a).

In May 2001, Petitioner was transferred from the Design and Planning Department to the Construction Department of District 6. (Pl.'s Depo., pg. 42, L-14, App. 12a). Immediately, Petitioner was assigned to work under Faour Alfaour, who was supervised by Respondent Don Violet. (Pl.'s Depo., pg. 44, L-11, App. 12a). In April 2002, Violet, a white male, became Petitioner's direct supervisor. (Pl.'s Depo., pg. 44, L-19, App. 12a). Petitioner was placed under the supervision of Don Violet to remove him from the supervision of Faour Alfaour who Petitioner had filed an intimidation complaint against.

As an Engineer II in ODOT's District 6 Construction Unit, Petitioner's primary duty was to input data received from inspectors in the field into ODOT's computer system which was called *Construction Management System (CMS)*. (Plaintiff's Depo. pg. 52, L-7, App. 12a). Petitioner's specific duties were to ensure that the information provided by the site inspectors matched the contract information and made sense. (Pl.'s Depo. pg. 52, L 10-15, App. 12a). The inspectors for these project sites are assigned to monitor a particular contractor or sub-contractor and document what the contractor or sub-contractor was doing. (Pl.'s Depo. pg. 53, L-15, pg. 54, L 3-5, App. 12a).

Petitioner's sworn Amended Complaint alleges various acts of discrimination over the course of two years which created an environment so pervasive and hostile that he had no choice but to resign his employment with ODOT. (Sworn Amend. Compl., Amend. App. 6b).

As an Engineer II charged with ensuring the CMS information is correct, Petitioner found that the Inspectors Daily Diary Report (DDR) often reflected information that *"didn't make sense."* (Pl.'s Depo. pg. 56, l-4, App. 12a). Petitioner observed that these were improper entries or duplications. Petitioner believed that the improper entries and duplications were leading to double payments to contractors. Petitioner informed Respondent Don Violet of this problem and his concerns in February or March of 2002. (Pl.'s Depo., p. 56, L-21-24, App. 12a). At the same time, Petitioner informed Respondent Don Violet that his religious beliefs prohibited him from participating in the falsification of project documents. However, Violet essentially dismissed Petitioner's concerns and informed him that he only wanted Petitioner to input what he (Violet) or the inspectors gave him. (Pl.'s Depo., p. 52, L-15-17, p. 55, L-13-15, App. 12a). Still concerned about the discrepancies, Petitioner continued to express his opinions about the improper entries and duplications which he later deduced were leading to double payments to contractors. In August of 2004, Petitioner and Vic Janowicz, one of the inspectors working with Petitioner, discovered that the source documents used to input information into the

CMS had been altered. (Pl.'s Depo., p. 57, L-15, App. 12a).

The only response from Respondent Violet about the CMS inconsistencies and duplicate reports from the inspectors were comments to Petitioner stating that, *"It's not your money."* And *"You input what you are given."* (Pl.'s Depo., p. 58, L-15, p. 55, L-13, p. 50, L-25, p. 52, L-16, App. 12a). Petitioner's first thought was to call the Ohio State Patrol, but in order to follow the union and ODOT policy, he decided to contact the Union Representative Kathy Stepanovsky. (Pl.'s Depo., p. 57, L 21-24, App. 12a). Through this process he was ultimately put in touch with Mike Young, the ODOT Investigator. Petitioner met with Mike Young on August 27th and gave him verbal statements which Young committed to writing. (Pl.'s Depo., p. 62, L-1, App. 12a). Petitioner expressed concern that Respondent Don Violet was *"pretty mad"* at him. (Pl.'s Depo., p. 72, App. 12a). Because of Violet's and other's aggressive nature towards Plaintiff, he feared for his safety. (Sworn Amend. Comp, Amend. App. 6b). Young investigated Petitioner's claims, and in his final report revealed multiple discrepancies, inaccurate information, and opportunities for double payments to contractors. However, the report did not mention or address Petitioner's fears or claims of racial or religious hostility. Nor was there a recommendation for any follow-up investigation regarding Petitioner.

Because Petitioner felt isolated, alone and feared for his life, he resigned on October 29, 2004. (Sworn Amend. Compl., Amend. App. 6b).

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER THE REASONABLE PERSON STANDARD AS CURRENTLY APPLIED BY THE LOWER COURTS, FAILS TO TAKE INTO ACCOUNT OTHER FACTORS SUCH AS RACE, CULTURE AND OTHER SOCIO-ECONOMIC BACKGROUNDS WHEN DETERMINING A HOSTILE WORK ENVIRONMENT CLAIM.

The doctrine of constructive discharge permits an employee who has resigned in the face of intolerable working conditions to be deemed to have been fired for purposes of litigation. The standard adopted by the majority of the courts is whether a reasonable person in the employee's position would have felt pressured to resign because of the terms and conditions of employment to which the Petitioner was subjected.

Where a claimant cannot prove that he suffered a hostile work environment, his claim for constructive discharge also fails. Hernandez-Torres v. Intercontinental Trading, Inc., 158 F.3d (1st Cir. 1998).

At all times from his hire to his termination, Petitioner was the only African American Engineer in the ODOT Construction Department. The District Court and the Sixth Circuit Court of Appeals applied the reasonable person standard based on a standard that requires people to act similarly and reasonably under the same set of circumstances. Any court should require that the reasonable person be viewed as experiencing the same limitations as those which the Petitioner experiences. However, in asserting the reasonable person standard, the court failed to take Petitioner's personal equation into account.

External factors are always relevant. Additionally, the context within which each action is made should also be considered. In the instant case, the court should have taken into account the most relevant external factors which consisted of the fact that Petitioner was the only African-American working in an all white department. This fact alone provides a back drop of what the environment was like within the department.

The reasonable person standard has long been used by the courts to gauge or evaluate the reasonableness of how one should act in a situation, based on the prevailing circumstances.

At the time of this writing, the undersigned counselor has not located case law on point that examines the "reasonable person" standard from the perspective of different races or cultures. Cultural differences provide inputs into how a person acts

towards another of a different culture, how a person perceives another person from a different culture, the amount of information given to a person from a different culture, and the kind of knowledge given to a person from a different culture.

The court must also consider the context in which these actions were made. Petitioner was subjected to abusive and threatening language by the white supervisor, as well as by white colleagues in the presence of the supervisor. What reasonable person would not have been fearful of losing his job in the face of hostile, discriminatory and retaliatory actions from one's supervisor who has control over the work load, work assignments and rating work performance which generally determines whether an employee will receive a raise and have continued employment.

Petitioner's isolation and failure to be treated equal in promotion and job assignment was obvious from the evidence. Despite his cry for help, his pleas fell on deaf ears because those in positions of authority did not act reasonably to rectify the disparate treatment.

Respondent Violet admitted he was aware of Petitioner's anxieties but did nothing to help him. Rather he assisted in the hostility by telling Petitioner that the entire department found him "disgusting." Petitioner was also called a "monkey" and this

remark to a black person is considered universally to be a racial comment.[1]

A pervasively hostile work environment is never authorized, but the supervisor is clearly charged with maintaining a productive, safe work environment. Faragher v. City of Boca Raton, 524 U.S. 775 (1998). Respondent Violet did not do either of these things but rather contributed to the hostility by either humiliating Petitioner through work or allowing others to demean his character in front of others. The real question at hand is what constitutes sufficiently severe or pervasive. If the systemic discrimination, hostility, isolation and threats are causing fear, creating depression and constantly affecting the peace of mind of the employee, who determines the severity when these issues are quite severe to the individual experiencing them.

The court in Harris v. Forklift Systems Inc., 510 U.S. 17 (1993) (some internal quotation marks and citations omitted) found that the language in Title VII

> is not limited to 'economic' or 'tangible' discrimination. The phrase 'terms, conditions, or privileges of employment' evinces a congressional intent to strike at

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[1] See Appendix B, the New York Post Cartoon where Delonas used a monkey to depict President Obama, and the two policemen who shot the monkey stated *"They'll have to find someone else to write the next stimulus bill."* The outrage of the entire country prompted an apology from Rupert Murdoch, owner of the New York Post.

CONCLUSION

Petitioner, a naturalized American citizen from Nigeria with a pronounced accent is subjected to twelve years of work environment where he is the only black engineer employee. Over this 12-year period, he was passed over for promotion, threatened to be shot by a co-worker, threatened to be run over with a truck by a co-worker, told by his supervisor (Don Violet) that he is "disgusting" and "nobody likes you," called stupid, childish, a "horse," and ultimately a "monkey." Perhaps a similar situated white individual could have endured these kinds of insults and not be driven to resign. But for Petitioner, these circumstances were sufficiently pervasive and abusive for him to resign.

For all of the foregoing reasons this Petition for Writ should be granted.

Respectfully submitted,

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No. 07-4352

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDWIN I. EJIKEME, *Plaintiff-Appellant,*	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
vs.	)	
DON VIOLET, c/o State of Ohio, Department of Transportation, STATE OF OHIO DEPARTMENT OF TRANSPORTATION, *Defendants-Appellants.*	)	OPINION

BEFORE: COLE, GIBBONS, Circuit Judges; BELL, District Judge.

COLE, Circuit Judge. Plaintiff-Appellant Edwin I. Ejikeme brought this action against his former employer, the State of Ohio Department of Transportation ("ODOT") and his former supervisor, Donald Violet, Ejikeme alleges that he was discriminated against on the basis of race, religion, and national origin in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., and

42 U.S.C. §§ 1981 and 1983. Ejikeme also claims that he was retaliated against for reporting suspected fraud in violation of the First Amendment and that he was constructively discharged. The district court granted summary judgment in favor of ODOT and Violet. For the following reasons, we AFFIRM.

The Honorable Robert Holmes Bell, United States District Judge for the Western District of Michigan, sitting by designation.

I. BACKGROUND

A. Factual Background

Ejikeme was born in Nigeria and came to the United States at the age of eighteen or nineteen to attend college. After obtaining a degree in civil engineering, he began working for ODOT in 1990, initially as an engineer intern, and later as a permanent engineer.

Although the events at issue in this lawsuit occurred primarily between 2001 and 2004, Ejikeme had friction with his supervisors throughout his employment at ODOT. For example, Ejikeme "think[s] he remembers[s]" one of his first supervisors doing "something like" ordering another employee to shoot Ejikeme in the leg. (Joint Appendix ("IA") I 2a-22.) In 1994, Ejikeme claims that another employee attempted to run him over with a truck. In 1992 or 1993, Ejikeme sued ODOT in federal court for

racially discriminatory failure to promote, and the case was settled in 1997. From 1995 to 2001. Ejikeme worked under the supervision of Ron Mayo, apparently without incident.

Beginning in 2001, Ejikeme's supervisor was Faour Aifaour. At that time, Defendant Don Violet was Alfaour's supervisor. Ejikeme and Alfaour did not get along well. In 2002, Ejikeme filed an internal complaint against Alfaour for" Supervisory Intimidation." The complaint dealt with Alfaour's management style generally and included specific complaints about, among other things, requests by Alfacur for Ejikeme to do tasks without following proper procedures and Alfaour's attempts to discuss Ejikeme' s complaints with him outside the presence of a union representative. After Ejikeme lodged his complaint, he alleges that Alfaour sent an email to the ODOT labor relations officer for their district criticizing Ejikeme. Ejikeme claims that the criticisms were "racially motivated," though, as Ejikeme recounts them in his Amended Complaint, they contain no mention of race and appear to relate only to Ejikeme's work ability and to the nature of his internal complaint, which Alfaour called "stupid" and "childish." Ejikeme also alleges that Alfaour referred to him as a "monkey" in a conversation with a contractor. In 2002, as a result of his complaint about Alfaour, Ejikeme was transferred to Violet's supervision.

a. Allegedly discriminatory acts by Violet

Violet, who is Caucasian, was a Transportation Engineer 4 and Area Engineer in Construction for 0001's District Six. Ejikeme alleges several ways in which Violet exhibited racial, religious, and *national* origin bias against him. First, Ejikeme claims that Violet failed to represent fairly the dispute between Ejikerne and Alfaour when describing it to an 0001 manager. Second, Ejikeme claims that Violet "exhibited racial and national origin bias" when he requested that Ejikeme be disciplined for his failure to respond to Violet's question about an incident involving Ejikeme's assigned state car, (JA 6b-9.) Third, Violet threatened to discipline Ejikeme if he continued to change his computer password, contrary to Violet's instructions. Fourth, for reasons not explained in the record, Violet told Ejikeme he was "disgusting" and said that everyone in the district thought he was disgusting. Fifth, Ejikeme claims that Violet, while on the telephone in the district office, said "[I'm] here with a horse," when the only other person in the office was Ejikeme, (JA 12a-80) Sixth, in 2001 or 2002 when Ejikeme was still under Alfaour's supervision, Ejikeme stated to Violet that he worked for Jesus, and Violet replied, "No, you work for Faous [Alfaour]."
(Id. 187.)

b. Ejikeme's report of fraud; ODOT 's investigation

A central part of Ejikeme's job in 2004 was inputting ODOT inspectors' reports into a computer system. At some point in early 2004, Ejikeme came to

believe that duplicate reports were being submitted, resulting in overpayments to contractors. In the spring of 2004, Ejikeme told Violet that this Christian religious beliefs prevented him from participating in the falsification of documents. Ejikeme testified in his deposition that he always considered himself a Christian, but that in about 1998, he became a born-again Christian. Ejikeme also told Violet, "[t]he work that you're giving me does not make sense. I'm seeing double numbers." (JA 12a—58.) Violet allegedly responded, "[p]ut in whatever they give you," and that Violet was not concerned because it was not Violet's money. *(Id. 59.)* Based on this, Ejikeme concluded that "Don Violet [was) paying contractor[s] more than once for work on the same location" *(Id.* 106.)

Ejikeme reported his suspicions to his union representative who put him in contact with Mark Young, an ODOT investigator. Young met with Ejikeme the following day and again about two weeks later, Ejikeme gave Young a lengthy statement about the suspected fraud. Neither in the interview, nor anywhere else, did Ejikeme connect his suspicion of fraud with his claims of Title VII violation He further stated that there was no animosity between himself arid Violet. Ejikeme also claims that after his initial report to Young, Violet asked him to place a forged document into a file and to open a new account for a project for which an account already existed.

Young conducted an investigation in response to Ejikeme's report, and the investigation revealed a

considerable number of discrepancies and flaws in the relevant records but no indication of fraud. What Ejikeme perceived as double-payments was apparently the result of a practice of the two project inspectors each completing daily inspections forms, sometimes covering the same projects—while this led to conclusion, it did not lead to fraudulent payments. Violet was disciplined for failure adequately to supervise the data entry and documentation compliance aspects of the project flagged by Ejikeme.

Ejikeme requested a second interview with Young to tell him that he had discovered several months previously that he was being spied on by unknown people. Ejikeme explained that he had forgotten to mention these fears at his initial interview with Young. Ejikeme claimed that remarks made by an outside consultant at an 000T ruining session in June of 2004 revealed that someone was spying on him at home. The remarks, while not referring to Ejikeme specifically, described certain intimate personal habits that applied to him, leading him to believe that someone had been spying on him at his home. At a training session in July of 2004, Ejikeme claims that an unknown person played a recording of his daughter's voice on the telephone. Ejikerne asked Young to "help [him] find who is denying him his) privacy at home and who is trying to frame [him]." (JA 19a-26.) In response to Young's questions, Ejikeme was unable to provide any more information about the alleged threats. Ejikeme never reported his fear that he was being spied onto the police. Ejikeme voluntarily resigned in October of

2004, later claiming that he was constructively discharged as a result of his hostile work environment.

B. Procedural Background

Plaintiff brought this action pro se. After discovery, ODOT and Violet moved for summary judgment, and the district court granted their motion. With respect to Ejikeme's hostile work environment claim, the court found that he failed to present sufficient evidence of En objectively hostile environment to establish a prima facie case. In particular, the court found no objective connection between the comments and offenses Ejikeme claimed to have suffered and his race, reUgion, or national origin. Even if Ejikeme had established ahostile work environment, the district court found that no basis would have existed for holding ODOT liable. The court also found a lack of evidence to support Ejikeme's constructive discharge claim. With respect to Ejikeme's § 1981 and § 1983 claims, the district court held that ODOT was immune from suit under the Eleventh Amendment. With respect to Ejikeme's § 1981 claim against Violet, the court held that Ejikeme had failed to come forward with any evidence of intentional discrimination on the basis of race. The court interpreted Ejikeme's pleadings to be claiming retaliation in response to constitutionally protected speech. The court found that Ejikeme had failed to offer proof of any adverse action motivated by his alleged exorcise of his constitutional rights. Plaintiff

timely appealed and is now represented by counsel.

II. ANALYSIS

A. Standard of review

We review a grant of summary judgment de novo. *Miller v. Admin. Office of the Courts,* 448 Fid 887, 893 (6th dr. 2006). The moving party is entitled to summary judgment "if the pleadings, *the* discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 247 (1986). The Court views factual evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in that party's favor. *See Henderson* v. *Walled Lake Consol Sch.,* 469 F.3d 479,487(6th Cir. 2006).. Summary judgment is not appropriate if the evidence would permit a reasonable jury to return a verdict for the non-moving party, *Anderson,* 477 U.S. at 25 1-52.

B. Title VII hostile work environment

Title VII offers, employees protection from a "workplace permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment... ." *Harris v. Forklift Sys., hw.,* 510 U.S. 17, 21(1993) (internal citations and quotation marks

omitted), To prevail on a hostile work environment claim, a plaintiff must show that his work environment was both objectively and subjectively hostile, "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment -- an environment that a reasonable person would find hostile or abusive--is beyond Title VII's purview." *Id.* at 2 1-22; *see also Jackson v. Quanex,* 191 F.3d 647, *658* (6th Cir. 1999).

To evaluate an alleged hostile work environment we look at the totality of the circumstances. *Harris,* 510 U.S. at 23; *Bowman v, Shawnee State Univ.,* 220 F.3d 456, 463 (6th Cir. 2000). We consider "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris,* 510 U.S at 23; *sec also Williams* u. *GMC,* 187 P.3d *553, 560-62* (6th Cir. 1999). "[Conduct must be extreme to amount to a change in the terms and conditions of employment.,.," *Faragher v. City of Roca Raton,* 524 U.S. *775,* 788 (1998).

Under Title VII, a plaintiff establishes a prima facie case of a hostile work environment based on race, religion, or national origin by demonstrating that (1) she was a member of a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment was based on race, religion, or national origin; *(4)* the harassment unreasonably interfered with her work performance by creating- an

intimidating, hostile, or offensive work environment; and (5) the employer is liable, *Hafford v, Seidner,* 183 F.3d 506, 512(6th Cit. 1999); *see also Bourl& v. Bridgestone/Firestone N. Am. Tire,- Li. C.,* 136 F. App'x *747,750(6th* Cir. 2005) (prima facie elements are the same for claims of racial and religious discrimination)

In our *view,* the district court correctly concluded that Ejikeme was unable to establish a prima fade case of a hostile work environment. Ejikeme was subjected only to a few scattered comments over several years, almost all of which had no apparent connection to his race, religion, or national origin. Ejikeme claims that Alfour called him a "monkey" and that Violet called him a "horse" and said be was "disgusting." He also points W several instances in which he was disciplined or threatened with discipline for reasons that appear, based on the record, to have been valid. The record does not provide reason to believe that these comments and actions were motivated by impermissible bias, However, even if they were racially motivated, as Ejikeme perceived them to be, they fall short of creating an objectively hostile work environment for purposes of Title VII.[1]

[1]The district court did not err in finding that the alleged instruction by Ejikeme's supervisor to shoot him in 1992 and Ejikeme's co-worker's alleged attempt to run Nm over with a truck in *1995* were not sufficiently related to his other hostile work

environment allegations to form one continuous hostile work environment and were thus untimely. *See, e.g., Wheaton v. N Oakland Med. Ctr.,* 130 F. App'x 773 (6th Cit. *2005)* (citing Nat'I R.R. *Passenger Corp.* v. *Morgan,* 536 U.S. 101, 105 (2002) (holding that "[a] court's task is to determine whether the acts about which an employee complains are part of the same actionable hostile work environment practice")) In addition, it appears that Ejikeme did not report either of these incidents to ODOT.

Ejikeme devotes a portion of his brief to arguing that Young's investigation uncovered more serious discrepancies than the district court acknowledged. However, this is irrelevant to Ejikeme's hostile work environment claim as the allegations of fraud bear no relation to Ejikeme's claims of harassment based on his membership in protected groups. Ejikeme attempts to tie the alleged fraud to his allegations of religious discrimination by claiming that he was asked to engage in dishonest conduct that his religion did not permit However, he cites no case law supporting his claim that a request to engage in alleged fraud can support a claim of religious discrimination for purposes of Tide VII.

Furthermore, the district court correctly found that Ejikeme's claim fails on the issue of ODOT's liability. First, with respect to conduct by co-workers, ODOT was not directly liable because there was no evidence that ODOT "knew or should have known of the [harassing] conduct and that its response manifested indifference or unreasonableness."

Jackson v. Quanex, 191 F.3d at 663. On the contrary, to the extent that Ejikeme made such complaints, ODOT's responses manifested serious concern. Second, when the alleged harasser is a supervisor, as was Violet, the employer may be held vicariously liable but may assert an affirmative defense to a hostile work environment claim (as long as no tangible employment action has been taken against the employee) 11(a) the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and (b) the employee filed unreasonably to take advantatge of preventive or corrective opportunities provided by the employer. *See Faragher, 524* U.S at 807. Given that ODOT responded promptly or anyone else, such as the police to Ejikeme's complaints, that Ejikeme was well-aware of the complaint mechanisms in place at ODOT, and that Ejikeme failed to complain of racial, religious, or national origin discrimination prior to this lawsuit, there is no genuine issue of material fact as to whether ODOT established its affirmative defense to liability for Violet's acts. *See, e.g., Thornton v. Fed Express Corp.,* 530 F.3d *451,457-58(6th* dr. 2008) (granting summary judgment to employer that established affirmative defense as to liability).

C. Constructive discharge

To demonstrate constructive discharge, Ejikeme must adduce evidence that 1) "the employer deliberately create[d] intolerable working conditions, as perceived by a reasonable person," and 2) the employer did so "with the intention of forcing the

employee to quit. . . ." *Moore v. Kuka Welding Sys.*, 171 F.3d 1073, 1080(6th Cit. 1999). In our inquiry into the first prong of this test,

> we consider the following factors relevant, singly or in combination: (1) demotion; (2) reduction 'in salary; (3) reduction in job responsibilities; (4) reassignment to menial or degrading work; *(5)* reassignment to work under a younger supervisor; (6) badgering, harassment, or humiliation by the employer calculated to encourage the employee's resignation; or (7) offers of early retirement or continued employment on terms less favorable than the employee's former status.

Logan v. *Denny's, 259* F.3d *558,569(6th* Cit. 2001) (quoting and adopting *Brown v. Bunge Corp.,* 207 F.M 776, 782 *(5th* Cir. 2000)).

Ejikeme has not adduced evidence that would allow a reasonable jury to conclude that intolerable working conditions existed when lie voluntarily left his position. Of the above-mentioned factors, he has assorted only a general claim that between September 10, 2004 and September 21, 2004, Violet made more unannounced visits than usual to the office where Ejikeme and "exhibit[ed] anger and at one point called Mr. Ejikeme a horse." (JA 6b-7.) Ejikeme also claims that ho feared that unidentified persons involved in the "fraud" he uncovered might try to kill

him, but he has offered no evidence in support of this subjective fear, Nor has he provided evidence in support of his fears that unknown people from ODOT were spying on his home, Ejikeme has failed to raise a genuine issue of material fact as to whether he was constructively discharged.

D. Section 1981 and 1983 claims

The district court correctly concluded that 000T, as an arm of the state of Ohio, is shielded by the Eleventh Amendment from Ejikeme's § 1981 and § 1983 claims. *See Hamilton's Bogarts, Inc. v. Michigan,* 501 F.3d 644, 654 n.8 (6th Cit. 2007); H*afford v. Seidner,* 183 F.3d 506,512(6th Cir. 1999). Ejikeme does not challenge this ruling.

As to defendant Violet, summary judgment dismissing Ejikeme's § 1983 free speech retaliation claim was proper be-cause Ejikeme did not offer evidence that he suffered an adverse action as a result of his allegedly protected speech. To establish a prima fade case for free speech retaliation, a plaintiff must show (1) that he engaged in constitutionally protected free speech, (2) that he was subjected to an adverse action or deprived of' a benefit, and (3) that the adverse action was motivated at least in part by the exercise of the protected speech. *Leary v. Daeschner,* 228 F.3d 729, '737 (6th Cir. 2000).. We need not reach this question of whether Ejikeme's speech was protected because he has failed to show that he suffered any adverse action as a consequence of that

speech. Ejikeme voluntarily left his position at ODOT0001,

and he was not constructively discharged. Ejikeme stated that he "could have been killed" by "anyone., that is involved in this fraud" if he had remained at his job. (JA 12a-1 89.) However, he offers no objective evidence of any threat against him or any other explanation for his subjective fear. No reasonable jury could find based on the evidence in this record that Ejikeme suffered an adverse action "that would likely chill a person of ordinary firmness from continuing to engage" in exercising his free speech. *Bloch v. Ribar,* 156 F.3d 673, 678 (6th Cit 1998).

The district court also properly ranted summary judgment on Ejikeme's 1981 claim because Ejikeme failed to adduce evidence that Violet intentionally discriminated against him on the basis of race, To establish a claim for racial discrimination under § 1981, a plaintiff must show (1) he belongs to an identifiable class of persons who are subject to discrimination based on their race; (2) the defendant intended to discriminate against him on the basis of race; and (3) the defendant's discriminatory conduct abridged a right enumerated in § 1981(a). *Amini v. Oberlin CalL,* 440 P.3d 350, 358 (6th Cir. 2006). Ejikeme has adduced no direct evidence that Violet intentionally discriminated against him on the basis of his race. To the extent that Ejikeme attempts to prove by indirect evidence that Violet subjected him to a racially hostile work environment, his claim fails for the seine reasons as his Title VU claim. See

Quinn-Hunt v. Bennett Enters., 211 F. App'x *452*, 456 (6th Cir. 2006) (same burden-shifting analysis applies to claims under Title VII and § 1991).

III. CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court's grant of summary judgment to ODOT and Violet.

Case 2:05-cv-00975-EAS-MRA Document 45 Filed 09/17/2007

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EDWIN I. EJIKEME,	)	
Plaintiff,	)	Case No.
	)	2:05-CV-975
	)	JUDGE
	)	EDMUND A.
	)	SARGUS, JR.
	)	Magistrate
vs.	)	Judge Mark R.
	)	Abel
DONALD VIOLET, et al.,	)	
Defendants.	)	

OPINION AND ORDER

This matter is before the Court for consideration of the Defendants' Motion for Summary Judgment (Doc. #38). For the reasons that follow, the motion is granted.

1.

Plaintiff, Edwin L. Ejikeme ["Plaintiff"], brings this action against his former employer, the State of Ohio Department of Transportation ["ODOT"] and his former supervisor, Donald Violet. Plaintiff's

Amended Complaint alleges claims for discrimination on the basis of religion, race, and national origin, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., and 42 U.S.C. §§ 1981 and 1983. The Court has jurisdiction pursuant to 28 U.S.C. § 1331.

Plaintiff, a native of Nigeria and a naturalized United States citizen, worked for ODOT from July 1990 until he resigned on October 29, 2004. Plaintiff was supervised by Defendant Violet beginning in Spring 2002. (Plaintiff's Depo. at 44-45). Plaintiff is a civil engineer and his most recent position at ODOT was "Transportation Engineer II." (Id. at 21).

Plaintiff claims that Defendant Violet discriminated against him on the basis of race and national origin in July 2002 when Violet allegedly failed to fairly inform manager Ron Robinette of a dispute Plaintiff had with his prior supervisor, Faour Alfaour. On deposition, Plaintiff testified that he and Alfaour did not get along and that he had concerns about things that Alfaour requested Plaintiff do. (id. at 44, 159). Plaintiff expressed his concerns to Alfaour's supervisor, Defendant Violet. Plaintiff told Violet that Plaintiff "worked for Jesus" and Violet allegedly state "[n]o, you work for Faour." (Id. at 187). Plaintiff filed a supervisory intimidation complaint against Alfaour[1] and thereafter, Plaintiff was placed under the supervision of Defendant Violet.

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[1] The complaint was comprised of allegations that Alfaour insisted on speaking to Plaintiff about his grievances without a

Plaintiff claims that, while under Violet's supervision, he was subjected to a hostile work environment. In particular, Plaintiff alleges that, in February or March 2004, Violet encouraged Plaintiff to falsify construction project documents against his religious belief. (Am. Compl. at ¶ 9a). At the time, part of Plaintiff's job was to enter daily inspectors' reports into the ODOT Construction Management System (CMS). The reports represented work that had been completed by contractors in the field. More than one report could be associated with a project because more than one inspector could be present on project. (Violet Depo. at 165). The reports are used to authorize payments to contractors. Plaintiff expressed concern about this to Violet who allegedly responded "[p]ut in whatever they give you" and "[i]t is not my money." (Pl. Depo. at 58-59). Plaintiff also informed Violet on two occasions that his religious beliefs prevented him from participating in what he believed was a fraud. (Pl. Depo. at 119). Plaintiff was unsatisfied with Violet's response and reported what he perceived as alleged fraud to his union representative, Kathy Stepanovsky. (Id. at 57).

Stepanovsky directed Plaintiff to meet with ODOT investigator Michael Young. Plaintiff's first meeting with Young was on August 27, 2004. Plaintiff told Young that he was afraid for his life and

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union representative present; that Alfaour called Plaintiff a "monkey" in front of a contactor; and that Alfaour took pictures of Plaintiff during work. Plaintiff's complaints were investigated by ODOT. (Pl. Depo. at 146-49).

feared someone was trying to frame him as a result of entering the "false" data. (Id. at 68-70).

Plaintiff claims that, in October 2004, Violet again urged Plaintiff to engage in fraudulent activities. First, Violet allegedly asked Plaintiff to "open an existing [construction] project as a new project." (Id. at 122). Second, Violet allegedly asked Plaintiff to include a forged document in the file which had been tendered to Young for an investigation. (Id. at 123). Third, Violet directed Plaintiff to go to a contractor's site to inventory traffic signs but Plaintiff did not want to go there for fear he would be struck by a "stray bullet" or accosted by the contractor. (Id. at 89-90, 94)[2].

Plaintiff met with Young a second time to report further instances of the alleged hostile work environment. First, Plaintiff claimed that during a meeting on July 19, 2004, someone played a tape recording of his daughter's voice saying "[a]nswer the phone daddy." (Pl. Depo. at 102). Plaintiff believed that someone at ODOT was monitoring his home and personal life. (Id. at 100, 104). Young's investigation found no fraudulent conduct by Violet. (Exhibit 25, Violet Depo.). There were, however, certain documentary discrepancies identified and Violet was disciplined for failing to supervise Plaintiff in the documentation process. (Violet Depo. at 36, 191-92).

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[2] Violet excused Plaintiff from going to the site. (Pl. Depo. at 125-27).

In addition to the above instances, Plaintiff claims that, in September 2004, Violet visited the construction office where Plaintiff worked and exhibited anger toward him. (Pl. Depo. at 135). Plaintiff claims that on one occasion, Violet referred to him as a horse; according to Plaintiff, this comment was racially motivated. (Id. at 80, 154).

Plaintiff further claims that, at various times Defendant Violet threatened Plaintiff with disciplinary action. (Id. at 112). Plaintiff claims that Violet also told him he was "disgusting and everybody in the District thinks you are disgusting." (Id. at 111, 161). In addition, Plaintiff claims that Violet talked to Plaintiff "like he was a child" and may have touched him once or came near him when directing Plaintiff to sit down. (Id. at 74-76).

Plaintiff submitted a resignation letter to be effective October 1, 2004. Plaintiff did not, however, resign on that day because he learned that it would take sixty days for the investigation on his claims of discrimination to be determined. Plaintiff apparently left employment on October 29, 2004. Plaintiff claims that he was constructively discharged from employment because Defendant Violet's "persistent and pervasive hostility towards [Plaintiff] because of his religious belief, race and national origin plus fear for his life made the employment condition so unbearable that he had no choice but to leave." (Am. Compl. at ¶ 9s). The Defendants move for summary judgment on Plaintiffs' claims.

II.

The procedure for considering whether summary judgment is appropriate, is found in Fed. R. Civ. P. 56(c); this section provides:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

The evidence must be viewed in the light most favorable to the nonmoving party. *Adickes v. Kress & Co.*, 398 U.S. 144, 158-59 (1970). Summary judgment will not lie if the dispute about a material fact is genuine; "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is appropriate however, if the opposing party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); see also, *Matsushita Electronic Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574 (1986).

The United States Court of Appeals for the Sixth Circuit has recognized that *Liberty Lobby, Celotex,* and *Matsushita* have effected "a decided change in summary judgment practice," ushering in a

"new era" in summary judgments. *Street v. J.C. Bradford & Co.*, 886 f.2D 1472, 1476 (6TH CIR. 1989). The court in *Street* identifies a number of important principles in new era summary judgment practice. For example, complex cases and cases involving state of mind issues are not necessarily inappropriate for summary judgment. Id. at 1479.

In addition, in responding to a summary judgment motion, the nonmoving party "cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must "present affirmative evidence in order to defeat a properly supported motion for summary judgment." Id. (quoting *Liberty Lobby*, 477 U.S. at 257). The nonmoving party must adduce more than a mere scintilla of evidence in order to overcome the summary judgment motion. Id. It is not sufficient for the nonmoving party to merely ""show that there is some metaphysical doubt as to the material facts."" Id. (quoting *Matsushita*, 475 U.S. at 586). Moreover, "[t]he trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact." Id. That is, the nonmoving party has an affirmative duty to direct the Court's attention to those specific portions of the record upon which it seeks to rely to create genuine issue of material fact.

III.

A. Title VII – Hostile Work Environment.

Title VII prohibits discrimination in employment on the basis of one's race, color, religion, sex or national origin. 42 U.S.C. § 2000e-2(a)(1). A claim for violation of Title VII includes allegations that discrimination amounts to a hostile work environment. *Clark v. United Parcel Service, Inc.*, 400 F.3d 341, 347 (6th Cir. 2005). In order to succeed in such a claim, a Plaintiff must show that "the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993).

A prima facie case for a hostile work environment claim includes proof of the following: (1) that Plaintiff is a member of a protected class; (2) that he was subjected to unwelcome racial, religious or national origin harassment; (3) that the harassment was based on his race, religion or national origin; (4) that the harassment created a hostile work environment; and (5) existence of employer liability. *Hafford v. Seidner*, 183 F.3d 506, 512)6th Cir. 1999). Under Title VII, the conduct must affect a "term, condition, or privilege of employment." 42 U.S.C. § 2000e-2(a)(1). This is satisfied if the conduct is severe or pervasive enough to alter the conditions of Plaintiff's employment and create an abusive working environment. *Harris*, 510 U.S. at 21-22. Further, in order to amount to a hostile work environment, both an objective and a subject test must be satisfied. "[T]he conduct must be severe or pervasive enough to

create an environment that a reasonable person would find hostile or abusive and the victim must subjectively regard that environment as abusive." *Bowman v. Shawnee State Univ.*, 220 F.3d 456, 463 (6th Cir. 2000), citing *Harris*, 510 IU.S. at 21-22.

> The court must consider the totality of the circumstances when determining whether, objectively, the alleged harassment is sufficiently severe or pervasive to constitute a hostile work environment. See *Williams*, 187 F.3d at 562. "[T]he issue is not whether each incident of harassment standing alone is sufficient to sustain the cause of action in a hostile work environment case, but whether – taken together – the reported incidents make out such a case." Id. The work environment as a whole must be considered rather than a focus on individual acts of alleged hostility. See id at 563. Isolated incidents, however, unless extremely serious, will not amount to discriminatory changes in the terms or conditions of employment. See *Morris v. Oldham County Fiscal Court*, 201 F.3d 784, 790 (6th Cir. 2000). Appropriate factors for the court to consider when determining whether conduct is severe or pervasive enough to constitute a hostile work environment "include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an

> employee's work performance." *Harris*, 510 U.S. at 23.

Bowman, 220 F.3d at 463.

With respect to the elements of a prima facie case, it is undisputed that Plaintiff is a member of a protected class. As to the remaining elements, Defendants move for summary judgment on the basis that Plaintiff fails to come forward with evidence sufficient to support a prima facie case. Defendants contend that Plaintiff fails to establish any connection between the alleged harassment and his race, religion and national origin. The Court agrees. The evidence, at best, shows that Plaintiff perceived that his supervisor asked him to engage in a fraud against Plaintiff's religious beliefs. The evidence supports Defendants' position that the entry of multiple reports on ODOT construction projects would not result in overpayments to contractors, as Plaintiff perceived. Similarly, Plaintiff's allegations that his supervisor called him a "horse" and told him he was "disgusting" have no apparent connection to Plaintiff's national origin or race aside from Plaintiff's personal perception. Plaintiff's perceived fear of attempts on his life also have no objective connection to any discriminatory animus[3]. Based on

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[3] Defendants contend that, to the extent Plaintiff's hostile work environment claim is based on an event that occurred in 1992, the claim is untimely. Plaintiff testified on deposition that in 1992, a coworker brought a pistol to work because Plaintiff's supervisor at the time, who is Caucasian, told the coworker to shoot Plaintiff. (Pl. Depo. at 22). Plaintiff apparently did not

the evidence presented, the Court concludes that even though Plaintiff subjectively believed that he was being discriminated against on account of his race, religion and national origin, the evidence fails to satisfy an objective standard for a hostile work environment.

Even if the Court were to conclude that the evidence satisfied an objective standard, Plaintiff's claim would nevertheless fail because there is no evidence to support the existence of liability on the part of ODOT. "In order to hold an employer directly liable in this context, the plaintiff must show 'that the employer knew or should have known of the conduct, and that its response manifested indifference or unreasonableness.'" *Bourini v. Bridgestone/Firestone North American Tire, LLC*, 136 Fed. Appx. 747, 751 (6th Cir. 2005), quoting *Jackson v. Quanex*, 191 F.32 647, 663 (6th Cir. 1999). Plaintiff informed ODOT of the alleged fraudulent payments to contractors and the matter was investigated. There is no evidence that would show that ODOT manifested an indifference or unreasonable response to Plaintiff's concerns. In sum, the Court concludes that the Defendants are entitled to summary judgment on Plaintiff's Title VII hostile work environment claim.

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report this event to anyone at ODOT. The Court finds no link between this alleged event and discriminatory animus. Further, the event is so far removed from the other events which form the basis of Plaintiff's Complaint, that it does not support a claim for a hostile work environment.

The Court notes that Defendants move for summary judgment to the extent Plaintiff asserts a constructive discharge claim, presumably under Title VII. A constructive discharge exists if "working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign." *Held v. Gulf Oil Co.*, 684 F.2d 427, 432 (6th Cir. 1982). The Court concludes that Plaintiff fails to come forward with evidence sufficient to support a constructive discharge claim. The record demonstrates that Plaintiff felt personally compelled to resign based on perceived hostility to his race and national origin as well as a fear for his personal safety. The record is, however, devoid of objective evidence to support this position. Thus, the Court concludes that Defendants are entitled to summary judgment to the extent Plaintiff asserts a constructive discharge claim.

B. §§ 1981 and 1983 Claims.

As a preliminary matter, the Court observes that Defendant ODOT cannot be held liable for Plaintiff's claims under § 1981 or § 1983 because, as an arm of the state, it is entitled to Eleventh Amendment immunity[4].

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[4] The Eleventh Amendment to the United States Constitution provides that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of a Foreign State." U.S. Const. amend. XI. This immunity extends to suits by

With respect to Plaintiff's § 1981 claim against Defendant Violet, Plaintiff must show that the Defendant intentionally discriminated against him on the basis of race. *General Bldg. Contractors Assoc., Inc. v. Pennsylvania*, 458 U.S. 375, 390 (1982). Plaintiff fails to come forward with any evidence of intentional discrimination by Violet on the basis of race. Plaintiff's claim is apparently based on isolated remarks by Defendant Violet which Plaintiff perceives were racially motivated. In this Court's view, such evidence is insufficient to support a claim for intentional discrimination under § 1981.

Plaintiff's § 1983 claim is based on Defendant Violet's alleged violation of Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution. Although not entirely clear from the pleadings, the Court surmises that Plaintiff claims that he suffered retaliation for engaging in constitutionally protected speech; in particular, his complaints about alleged fraud at ODOT. While Plaintiff's speech on this matter may be one of public concern entitled to First Amendment protection, *Connick v. Myers*, 461 U.S. 138, 147 (1983), in order to state a claim of retaliation, the Plaintiff must also show that an adverse action by Defendant caused him to suffer injury that would have chilled his future speech. Further, Plaintiff must show that the adverse action was motivated, at least in part, in response to

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citizens against their own state. See *Edelman v. Jordan*, 415 U.S. 651, 663 (1974).

the Plaintiff's exercise of his constitutional rights. *Leary v. Daeschner*, 228 F.3d 729, 737 (6th Cir. 2000).

In this case, Plaintiff voluntarily left employment on the basis of an allegedly hostile work environment. According to Plaintiff, the environment was not solely caused by Plaintiff's speech about the purported fraudulent payments to contractors. Plaintiff's Complaint makes clear that the allegedly hostile environment existed prior to and after the purported discovery of fraud. Plaintiff points to no evidence that would support a claim that he was retaliated against on account of engaging in protected First Amendment speech. Accordingly, the Court concludes that Defendant Violet is entitled to summary judgment on Plaintiff's First Amendment claim.

C. Remaining Matter.

The Court notes that, in opposing Defendants' motion for summary judgment, Plaintiff argues that Defendants' failure to promote him to the position of Transportation Administrator 2002 was based on his race and religion. Plaintiff also claims that he was discriminated against because he did not given a security system at his field site. These claims wee not contained in the Ohio Civil Rights charge of discrimination. As a result, the Court declines to entertain the claims.

IV.

In light of the foregoing, the Defendants' Motion for Summary Judgment (Doc. #38) is **GRANTED** The Clerk is **DIRECTED** to enter judgment in favor of Defendants and to close this case.

IT IS SO ORDERED.

9-17-2007
DATE

/S/
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

Delonas for Wednesday February 18, 2009

http://www.nypost.com/delonas/delonas.htm

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